2014 WL 7891802 (Ill.Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Illinois.
Illinois County Department, Law Division
Cook County

Harey ISRAEL, Individually, David Israel, Individually, Alan Israel, Individually, and Samantha Israel, Individually, Plaintiffs,

v.

Diane ISRAEL, Individually, Aaron Israel, Individually, and Bruce Bell, Individually, Defendants.

No. 2012L003464.
March 25, 2014.

Calendar U

Plaintiffs' Response to Diane Israel's Motion to Dismiss

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Honorable Brigid Mary McGrath.

Plaintiffs HAREY ISRAEL, DAVID ISRAEL, ALAN ISRAEL, and SAMANTHA ISRAEL, by and through their attorneys SENAK KEEGAN GLEASON SMITH & MICHAUD, LTD., as their Response to Defendant Diane Israel's Motion to Dismiss Counts 1-9 and 12-16 of the Fourth Amended Complaint pursuant to Section 5/2-615 of the Illinois Code of Civil Procedure states as follows:

INTRODUCTION

The time has come for the parties to prove what they claim to be true. Plaintiffs' claim Aaron Israel has been socially isolated to such an extent by the dominance exerted by his daughter, Defendant Diane Israel, that he lacks the capacity to control or revoke the Power of Attorney wielded by her. Plaintiffs' Amended Complaint not only contains specific factual allegations to support these claims, it includes, among other things, the report of a medical doctor establishing a causal connection between Aaron Israel's diminished capacity and his inability to revoke the Power of Attorney or to control the acts of his domineering daughter.

Diane Israel denies these claims. Diane Israel contends that Aaron Israel does not want to talk to his sons, does not want to be visited by his grandchildren, and does not want to know whether he has great grandchildren. While Diane Israel contends her brothers' motivation for pursuing theses claims is to influence their father's estate plan, she has offered no evidence to support these accusations beyond mere surmise and conjecture. Although Diane Israel's Motion to Dismiss reflects a keen ability to vilify her brothers and cast aspersions on her family for pursuing this action, she offers no reason why Aaron Israel, a man in the twilight of his life, would harbor such resentment toward ***all*** his children, grandchildren, great grandchildren, and friends that he would not want to be visited by ***any*** of them; except one, Defendant Diane Israel. Diane Israel would have this court believe - without hearing any evidence - that of his four children, eight grandchildren, and four great grandchildren that she is the ***only*** member of the Israel family he wants to see.

When conflicting claims are made by opposing parries, our justice system does not rely upon vitriolic denials and hollow accusations to discern the truth. Our justice system does not rigidly apply hyper-technical interpretations of the procedural and substantive rules to overshadow and obscure the spirit of the law. It does not turn a deaf ear to those who lay their claims before the bench confident they will have an opportunity to be heard and be judged fairly. Instead, our justice system offers a simple and time-tested method for discerning the truth. It issues a basic challenge to both litigants: prove it.

The resolution of this case depends, in part, on the intentions and wishes of one person: Aaron Israel. If Aaron Israel truly does not want to see his sons, does not want to be visited by his grandchildren, or hold his newborn great-grandson in his arms, all he need do is come before this Court and say so. If Aaron Israel has consented to his daughter using funds from his estate to hire bodyguards to protect him from phantom threats, to buy homes for her friends and family, and to make frivolous investments in failed companies for her own benefit, all he need do is testify in open court that she has his permission to do so. If Plaintiffs' claims are so outrageous, so unfounded, and so wanting in reality, this Court has the mechanisms and the authority to not only enter summary judgment against the Plaintiffs, but to sanction Plaintiffs for frivolous pleading.

But, what if Plaintiffs are right. What if Aaron Israel truly wants to see his family and friends and is being prohibited from doing so by a daughter who wants nothing more than everything. What if Diane Israel has sequestered her father, exploited her position as his Power of Attorney, and poisoned his perception of his family. What if she is the one who wants control over Aaron Israel's financial empire, not her brothers.

Can this Court ignore the pleas of Aaron Israel's children and grandchildren. Can this Court deny them a chance to prove their claims in the face of the well-pled allegations of the complaint, the medical testimony supporting their claims, and the affidavits and statements from law enforcement personnel, religious leaders, and family friends who claim Aaron Israel wants to see his family. Doing so would not only condone the wrongdoing, it would embolden others who seek to profit by oppression and exploitation of the **elderly**. Given the record before the court, dismissing Plaintiffs' Complaint without determining whether it is meritorious would be nothing less than an abdication of this Court's legal and moral responsibility to seek truth and administer justice.

I. Social Isolation + Domination and Control = Lack of Capacity to Revoke/Control POA

This basic equation illustrates the gravamen on Plaintiffs' claims under the Illinois Power of Attorney Act (Counts I and II). As a consequence of his chronic isolation, coupled with the domination and control exerted by his daughter, Aaron Israel has lost the capacity to revoke or control the Power of Attorney held by Defendant Diane Israel. This claim is based not only on specific factual allegations, it is supported by expert medical testimony that is corroborated by peer reviewed medical literature.

A. Aaron Israel Has Been Socially and Physically Isolated by Defendant Diane Israel

While it is axiomatic that when ruling on a motion to dismiss, the court must accept as true all well-plead allegations of the complaint, the factual allegations underlying Plaintiffs' claims should be given even more credence because in many instances they are based on undisputed facts, or are derived from the affidavits and deposition testimony of Aaron Israel's treating physicians. [1] A copy of Plaintiffs' Fourth Amended Complaint is attached hereto as **Exhibit 1**. These include:

• **Advanced Age** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(A)(i). It is undisputed Aaron Israel is now 96 years old. Plaintiffs' medical expert, Dr. Alexander Obolsky, believed that Aaron Israel's advanced age is one factor that contributes to his social isolation. Dr. Oblosky's opinion is supported by medical literature, which reflects the common sense conclusion that as people age, they have less social acquaintances and are less physically capable to lead an active social life. [2]

• **Depression** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(A)(iii). Dr. Gabriel Berlin, one Aaron Israel's own treating physicians, submitted affidavit testimony stating that Mr. Israel suffers from depression. Dr. Obolsky relies upon Aaron Israel's depressed emotional condition as another basis to support his opinion. Depression is another known risk factor that causes social isolation. [3]

• **Medication** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(A)(iv). Mr. Israel takes a litany of medications, including Citalopram, an anti-depressant, and Furosemide, a potent diuretic. The reported side effects of Citalproram include confusion, trouble concentrating, and memory problems. *See*, **Exhibit 2**. The side effects of Furosemide include confusion, trouble concentrating, and hearing loss. *See*, **Exhibit 3**. Dr. Obolsky relies upon the known side effects of the medication Aaron Israel takes as another basis for his conclusion that Aaron Israel's ability to control Diane Israel has been diminished.

• **Loss of Spouse** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(A)(vii). It is undisputed Aaron Israel's spouse, Miriam Israel, passed away on December 16,2010. Loss of spouse is another risk factor associated with social disengagement and isolation by the medical experts. [4] Dr. Obolsky relies upon Aaron Israel's loss of his spouse as an additional contributing factor evidencing Aaron Israel's social isolation and diminished capacity.

• **Hearing Impairment** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint 22(A)(viii). Aaron Israel's counsel, Suzanne Prysak, stated on the record that Mr. Israel suffers from a hearing impairment. *See*, **Exhibit** 4, Transcript of Proceedings, dated May 14, 2013, pp. 11, 13. Aaron Israel also admitted, on the record, that he is "hard of hearing." *Id.* at p. 15, 17. Hearing loss is also a known side effect of the medication Furosemide. Physical disabilities, such as impaired hearing, are among the known risk factors identified in medical literature that renders a person more vulnerable to isolation and manipulation. [5] Dr. Obolsky relies on Aaron Israel's hearing impairment as another "red flag" which, in combination with the other risk factors, contributes to Aaron Israel's susceptibility to undue influence by his daughter.

• **No Telephone Access** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(A)(iv). Plaintiffs' Amended Complaint specifically lists the telephone numbers for Mr. Israel's Northbrook residence and his cell phone. *Id.* A simple call to these numbers will confirm that the telephone number to Mr. Israel's Northbrook residence has been "temporarily disconnected," and that his cell phone number has a "voicemail that has not been set up." Telephone numbers that have been changed or disconnected are further warning signs that a person has become socially isolated and unable to manage their affairs. [6] Dr. Obolsky relies on Aaron Israel's lack telephone access to the outside world as further evidence that he has become socially isolated.

• **Education** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(A)(ix). Despite his financial achievements, it is undisputed Aaron Israel has less than 12 years of formal education. While Mr. Israel is proof that formal education is no predictor of future success, older adults with less than 12 years of education are more prone to social disengagement and isolation. [7] Dr. Obolsky relies on Aaron Israel's lack of advanced education as another factor contributing to his social isolation, making him more susceptible to influence by Diane Israel, and diminishing his capacity to control her actions or revoke the Power of Attorney.

Plaintiffs' Amended Complaint alleges these facts, in conjunction with the other well plead allegations of the complaint, evidence that Aaron Israel has been sequestered and socially isolated by Defendant Diane Israel. It is an accepted conclusion in the field of behavioral psychology that social isolation erodes a person's capacity to engage in independent thought. [8] While social isolation reduces cognitive capacity, it is confluence of social isolation and the control exerted by Defendant Diane Israel over every aspect of her father's life that results in Aaron Israel's inability to control or revoke the Power of Attorney held by his daughter. Plaintiffs' Amended Complaint contains specific factual allegations evidencing Defendant Diane Israel's domination and suppression of her father's free will.

B. Defendant Diane Israel Exerts Total Control and Domination over Aaron Israel

Like the allegations supporting the claim that Aaron Israel is socially isolated, the allegations supporting the claim that Diane Israel dominates and controls her father's life are either undisputed or corroborated by independent evidence. This evidence includes, but is not limited to:

• **Armed Body Guards** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(B)(iii). Plaintiffs' Amended Complaint alleges that armed bodyguards hired by Defendant Diane Israel, and paid with money from Aaron Israel's estate, accompany him everywhere he goes. This fact is undisputed. Plaintiffs' Amended Complaint contains specific dates and locations when these bodyguards physically intervened to prevent Plaintiff Harey Israel and other family members from speaking with Aaron, as well as the names of witnesses who observed these events. *Id.* at ¶ 22(A)(xiii). These allegations are also corroborated by the Affidavit of Sergeant Edward Santiago of the Sunny Isles Beach Police Department. *See*, Exhibit I, Plaintiffs' Fourth Amended Complaint, Group Exhibit A, Affidavit of Sergeant Santiago. Dr. Obolsky relies on the presence of round-the-clock bodyguards to support his opinion that Diane Israel dominates and controls Aaron Israel's life and being.

• **Surveillance Cameras** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(B)(v). Plaintiffs' Amended Complaint alleges Defendant Diane Israel has installed surveillance cameras in the home of Aaron Israel that allow her to monitor his every move and his interaction with any visitors. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint, Exhibit B, photographs of surveillance cameras installed in the home of Aaron Israel and outside his business. Dr. Obolsky relies on Diane Israel's surveillance of her father's movements as a basis for his conclusion that Aaron Israel is under her domination and control.

• **Denial of Access** - *See*, Exhibit I, Plaintiffs' Fourth Amended Complaint ¶ 22(B)(ii). Plaintiffs' Amended Complaint alleges Defendant Diane Israel has instructed security personnel at Aaron Israel's condominium residences in Northbrook, Illinois, and Sunny Isles Beach, Florida, to deny access to Plaintiffs and other family members. Plaintiffs' Amended Complaint includes documentary evidence that Defendant Diane Israel revoked Plaintiff Harey Israel's access to Aaron Israel's Northbrook condominium by instructing security personnel at the front gate to deny him entry. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint, Exhibit E. Additionally, the Affidavit and Police Report of Officer Santiago reflect that Aaron Israel's grandson, Michael Israel, was denied access to his grandfather's condominium in March 2013. Dr. Obolsky relies on Diane Israel's refusal to allow other family members to visit Aaron Israel as evidence that he is socially isolated.

• **Supervised Visitation** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(B)(ii). Plaintiffs' Amended Complaint alleges that Aaron Israel's grandchildren are not allowed to visit him unless they make an “appointment” to do so with Diane Israel, and either Diane Israel or one of her appointed bodyguards/caregivers are present to monitor the conversation. These allegations are substantiated by a transcript of the text messages exchanged between Diane Israel and Aaron Israel's grandson, Michael Israel, incorporated into the Plaintiffs' Amended Complaint. *Id.* at ¶ 22(A)(xi)(c). Dr. Obolsky believes requiring supervised visitation is some evidence that Diane Israel has an abnormal fixation on controlling communications with her father.

• **Forged Signature** - *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 22(BXii). Plaintiffs' Amended Complaint asserts that Aaron Israel's signature was falsified on an Affidavit submitted to Judge Griffin in a failed attempt to keep Aaron Israel from

appearing for his deposition in this case. These allegations are corroborated by the Affidavit of Warren Spencer, a handwriting expert, who has been qualified to offer testimony in civil and criminal cases in Illinois and other states. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint, Exhibit F, Affidavit of Warren Spencer. Apart from Mr. Spencer's expert testimony, even a visual comparison of the purported signatures of Aaron Israel call into question the legitimacy of the signature on Aaron Israel's Affidavits. *Compare*, Aaron Israel's signatures on Exhibits C, D and E of Plaintiffs' Fourth Amended Complaint.

Plaintiffs' Fourth Amended Complaint alleges that as a direct and proximate cause of Aaron Israel's social isolation and the domination and control exerted over him by Diane Israel, Aaron Israel has lost the capacity to control or revoke his Power of Attorney. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 23, p. 12 - 13. These statements are not conclusory allegations, but are supported by competent medical testimony from a qualified expert.

C. A Medical Report is Not Required to State a Claim Under the Power of Attorney Act

While Plaintiffs have elected to provide the Court with an expert report establishing a causal connection between Aaron Israel's social isolation, the domination and control exerted by this daughter, and his inability to control or revoke his Power of Attorney, Plaintiffs do not concede they are obligated to do so to state a claim under the Power of Attorney Act (Count I and II). Defendant cites to no case that has held a medical report from a treating physician is required to state a claim for violations of the Power of Attorney Act. The two cases cited by Defendant, *In re Estate of Hartley*, 2013 IL App (3d) 110264, 995 N.E.2d 596, and *Williams v. Estate of Coles*, 393 Ill App. 3d 771 (1st Dist. 2009) are distinguishable, since both cases involved petitions for guardianship under the Probate Act, which expressly requires a report be provided at the time a petition for guardianship is filed. *See*, 755 ILCS 5/1 la-9.

Moreover, unlike Section 1 la-9 of the Probate Act, there is no express provision in the Power of Attorney Act requiring a physician's report as a condition precedent to stating a claim for violations of the statute. Significantly, the General Assembly expressly incorporated by reference the definition of “Incapacitated” from the Probate Act into the Power of Attorney Act. *See*, 755 ILCS 45/2-3 (c-5). Yet, the General Assembly chose not to incorporate into the Power of Attorney Act the report requirements of Section 1 la-9 of the Probate Act. The Probate Act's report requirement was clearly known to the General Assembly at the time it enacted the Power of Attorney Act and, had it been the legislature's intent to include a report requirement in the Power of Attorney Act, the General Assembly had ample opportunity to do so.

The Illinois Supreme Court has long recognized the rule of statutory construction reflected by the Latin expression *expressio unius est exclusio alterius?*[9] While not a rule of law, it reflects a generally accepted principal of statutory construction which may only be overcome by a strong indication of contrary legislative intent. *Baker v. Miller*, 159 Ill. 2d 249, 636 N.E.2d 551 (1994). *Sulser v. Country Mutual Insurance Co.*, 147 I11.2d 548, 591 N.E.2d.427 (1992). Applying this rule of construction to the statutes at issue in the present case results in the conclusion that by incorporating some provisions of the Probate Act into the Power of Attorney Act, but by excluding the report requirement, the General Assembly expressed a clear intent that a physician's report is not required to state a claim under the Power of Attorney Act. Defendant may overcome this conclusion by presenting evidence of “a strong indication of contrary legislative intent,” but in absence of such a showing, there is no basis to conclude that a report is needed to state a claim under the Power of Attorney Act.

This conclusion is consistent with the Court's prior comments when addressing the issue of whether a physician's report was needed to sustain a claim under the Power of Attorney Act. Plaintiffs filed an Emergency Motion seeking leave to issue subpoenas for production of Aaron Israel's medical records for the purpose of having them reviewed by a physician to further support their claims. Defendants, of course, opposed the Motion. At the hearing on the motion, the court directly addressed whether a physician's report was required to state a claim under the Power of Attorney Act. In response to a question from Plaintiffs' counsel, the court commented as follows:

MR. SENAK: One point that was raised in the [prior] motion to dismiss was that we [Plaintiffs] had to supply, effectively, a physician's report after a review of the medical records or after a review of —

THE COURT: I denied that. I didn't think that that's what you needed. You needed some allegations.

MR. SENAK: Understood. I appreciate that, your Honor.

THE COURT: I rejected that argument.

See, **Exhibit 5**, Report of Proceedings, dated Nov. 22, 2013, p. 14:1- 10.

Thus, consistent with fundamental rules of statutory construction expressed by the Illinois Supreme Court in *Baker* and *Sulser*, this Court has ruled that a physician's report is not required to state a claim under Counts I and II of the Amended Complaint Hence, Defendant's argument that the report submitted by the Plaintiffs should be disregarded or is somehow deficient does not warrant dismissal, because a physician's report is not needed and there are sufficient allegations in the Fourth Amended Complaint to state a claim. However, even if the Court would somehow reconsider its prior ruling and place some credence in Defendant's argument, the physician's report attached to Plaintiffs' Amended Complaint satisfies the requisite elements of Section 5/11 a-9 of the Probate Act to state a claim.

D. Plaintiffs Allegations of Causation are Supported by Expert Medical Testimony

Section 5/11 a-9 of the Probate Act states that:

(a) The petition for adjudication of disability and for appointment of a guardian should be accompanied by a report which contains:

(1) a description of the nature and type of the respondent's disability and an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently;

(2) an analysis and results of evaluations of the respondent's mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed within 3 months of the date of the filing of the petition;

(3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor;

(4) a recommendation as to the most suitable living arrangement and, where appropriate, treatment or habituation plan for the respondent and the reasons therefor;

(5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician and a statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.

755 ILCS 5/1 la-9.

Dr. Obolsky's report states that Aaron Israel has diminished capacity as the result of being socially isolated and subjected to the domination and control of Defendant Diane Israel. The report includes an assessment of how this condition impacts Aaron Israel's ability to make decisions or to function independently: he lacks the capacity to control or revoke the Power of Attorney. Dr. Obolsky's report reflects his analysis was performed within 3 months of the date of filing, and includes an evaluation of Aaron Israel's educational condition (less than 12 years of formal education), adaptive behavior (Aaron Israel is socially dependant on Diane Israel) and social skills (he is isolated and sequestered). Dr. Obolsky offers the opinion that if Aaron Israel is freed from the oppressive control of his daughter, his independent cognitive function would be restored. Finally, the report

is signed by Dr. Obolsky, who is a board certified, licensed physician, and a copy of Dr. Obolsky's curriculum vitae is attached to his report reflecting his certifications, licenses, and other credentials that qualify Dr. Obolsky to perform the evaluation. *Williams v. Estate of Cole*, 393 111. App. 3d 771, 914 N.E.2d 234 (1st Dist. 2009) (physicians board certified in psychiatry had adequate credentials to evaluate respondent's competency). Thus, even if the Court were to superimpose the report requirements of Section 5/1 la-9(a) on the Probate Act, Plaintiffs' Fourth Amended Complaint contains the required elements to state a claim.

E. Plaintiffs' Allegations of Incapacity Conform to the Definition of Section 45/2-3(c-5)

Section 45/2-3(c-5) of the Power of Attorney Act states:

"Incapacitated", when used to describe a principal, means that the principal is under a legal disability as defined in Section 1 la-2 of the Probate Act of 1975. A principal shall also be considered incapacitated if: (i) a physician licensed to practice medicine in all of its branches has examined the principal and has determined that the principal lacks decision making capacity; (ii) that physician has made a written record of this determination and has signed the written record within 90 days after the examination; and (iii) the written record has been delivered to the agent. The agent may rely conclusively on the written record.

755 ILCS 45/2-3

Section 1 la-2 of the Probate Act defines the term "Disabled person" to mean

"Disabled person" means a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering, or (d) is diagnosed with fetal alcohol syndrome or fetal alcohol effects.

755 ILCS 5/1 la-2

Dr. Obolsky concludes in this written report that "[i]t is my opinion held with a reasonable degree of forensic medical and psychiatric probability that Mr. Israel suffers from mental deterioration and physical incapacity because of Mr. Israel's advanced age, physical and mental illness, and social isolation. As a direct result Mr. Israel is not fully capable to manage his person or estate, including the capacity to control of revoke the power of attorney given to Diane Israel as a direct result of Ms, Diane Israel's isolation and sequestration of her father from other family members and friends." *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint Exhibit G. Thus, Plaintiffs' Fourth Amended Complaint contains specific medical testimony which satisfies the Probate's definition of a "disabled person," which has been incorporated by reference into the Power of Attorney Act's definition of "incapacitated."

Defendant attempts to negate the effects of Dr. Obolsky's report through a variety of failed arguments. First, Defendant claims Dr. Obolsky's report should be ignored because his opinion is based on "a reasonable degree of forensic medical and psychiatric probability." This argument fails because it is well-settled under Illinois law that an expert's opinions are admissible when they are phrased in terras of probabilities and possibilities. *Marston v. Walgreen Co.*, 389 111. App. 3d 337, 907 N.E.2d 851 (1st Dist. 2009) (expert's opinion as to causation is not inadmissible merely because it is phrased in terms of probabilities or possibilities that are based upon certain assumed facts); *Mikus v. Norfolk & Western Ry. Co.*, 312.Ill.App.3d 11, 726 N.E.2d 95 (1st Dist. 2000) (an expert's testimony of causation in terms of probabilities does not render his testimony inadmissible).

Defendant suggests Dr. Obolsky's report is flawed because it based on hearsay. Again, Illinois courts have long ruled that an expert may rely upon hearsay data if it is customarily relied upon by experts in the field, and the data is sufficiently trustworthy to make the reliance reasonable. *Bass v. Cincinnati Inc.*, 281 Ill. App. 3d 1019, 667 N.E.2d 646 (1st Dist. 1996). In formulating his opinions, Dr. Obolsky relied upon a series of "red flags" or risk factors which are identified in peer reviewed medical

literature as signs of diminished capacity. Thus, the factors Dr. Obolsky relied upon are commonly accepted in the field of psychiatry by physicians when evaluating a patient's capacity. The information Dr. Obolsky relied upon to determine whether any of the known risk factors apply to the present case is either undisputed or based on sworn testimony of Aaron Israel's treating physicians, statements of law enforcement personnel who are under a legal duty to provide accurate information in reports they prepare, or on statements of Aaron Israel and his counsel. Because this evidence was provided under oath, under threat of criminal prosecution if it were untruthful, or is admissible as an exception to the hearsay rule, the sources of the data Dr. Obolsky relied upon have a high degree of reliability.

Finally, Defendant claims Dr. Obolsky's report should be ignored because he did not personally examine Aaron Israel. However, Defendant cites to no case which requires Dr. Obolsky to have personally examined Aaron Israel before he can formulate his opinion. More significantly, nothing in the plain language of Section 5/1 la-9 requires the physician submitting the report to have personally examined the respondent. Section 5/1 la-9 provides only that the report contain "an analysis and results of the respondent's mental and physical condition." Dr. Obolsky's report satisfies this element and the other requirements of Section 5/1 la-9. *See supra* Section 1(D).

There are sound policy considerations behind the General Assembly's decision not to require a medical exam to state a claim in either the Probate Act or the Power of Attorney Act. It is foreseeable that in some instances the respondent may not agree to be examined by the petitioner's expert, and the respondent's treating physicians may be sympathetic and biased in the respondent's favor, thereby affecting the objectivity of their assessments. In the present case, not only did Aaron Israel refuse to appear for his deposition - willingly incurring a $500 per day sanction for failing to do so - but he refused to even meet with Marina Ammendola, the guardian *ad litem* appointed by Judge Griffin to assist the court in evaluating his condition. *See*, **Exhibit 6**, Order, dated May 21, 2013, p 6. Whether this was done of his own volition or because of Diane Israel's control over his freedom of movement remains subject to further proof. But the functional affect of either of these reasons is it is likely Mr. Israel would not have agreed to appear for a medical exam by Plaintiffs' expert or complied with any court order compelling him to do so. Under these circumstances, requiring a physician's exam for petitioners such as the Plaintiffs to state a claim would create an unnecessary obstacle that would thwart the remedial purpose of the Power of Attorney Act.

II. PLAINTIFFS HAVE REQUISITE STANDING TO PURSUE THEIR CLAIMS

Defendant claims Plaintiffs must wait until Aaron Israel dies before they have standing to pursue their claims for breach of fiduciary duty (Count Ill); undue influence (Count IV); fraud (Count V); constructive fraud (Count VI); conversion (Count VIII); unjust enrichment (Count IX); and claims against Bruce Bell, Diane Israel's attorney, for aiding and abetting a breach of fiduciary duty (Count XII) and adding and abetting a scheme to defraud (XIII); and civil conspiracy (Count XIV). Most assuredly, Defendant would prefer to litigate these claims after Aaron Israel dies, so the best source of evidence of Diane Israel's and her conspiring counsel's wrongdoing will not be available to testify against them. However, Plaintiffs are not required to wait for their father to the to pursue their claims because they have already suffered harm to a legally cognizable interest resulting in present pecuniary loss as a result of Defendant's wrongful acts.

A. Plaintiffs' Complaint Alleges Harm to a Legally Cognizable Interest

The doctrine of standing requires that a party have a real interest in the outcome of the action. *In re Estate of Wellman*, 174 I11.2d 335, 673 N.E.2d 272 (1996). The purpose of standing is to ensure that courts are deciding actual, specific controversies and not abstract questions or moot issues. *People ex rel Madigan v. Burge*, 2012 IL App (1st) 112842, 981 N.E.2d 1058. The doctrine of standing is designed to preclude persons who have no interest in a dispute from bringing suit and requires a person seeking to invoke the court's jurisdiction to have some legal or equitable right, title, or interest in the subject matter of the controversy. *Ferguson v. Patlon*, 2013 IL 112488, 985 N.E.2d 1000. Standing is an element of justiciability, and it must be defined on a case-by-case basis. *In re M.I.*, 2011 IL App (1st) 100865, 964 N.E.2d 72.

A party demonstrates standing by showing some injury to a legally cognizable interest or an imminent danger of sustaining injury as a result of the wrongful conduct. *Brockett v. Davis*, 325 Ill.App.3d 727, 762 N.E.2d 513 (3d Dist. 2001). A legally cognizable interest sustains sufficient injury to give the aggrieved party standing if it is; (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be prevented or redressed by granting the requested relief. *Law Offices of Colleen M. McLaughlin v. First Star Fin. Corp.*, 2011 IL App (1st) 101849, 963 N.E.2d 968.

Plaintiffs Harey Israel, David Israel and Alan Israel are Aaron Israel's natural born sons. As such, in the absence of proof to the contrary, they are Aaron Israel's heirs-at-law. *Dillman v. Dillman*, 409 Ill. 494, 100 N.E.2d 567 (1951). As Aaron Israel's heirs-at-law, Plaintiffs are the beneficiaries of his estate and have a pecuniary interest in the value of the estate. *People ex rel. George v. Nelms*, 241 Ill. 571, 573, 89 N.E. 683, 684 (1909) (beneficial interest daughter receives in real estate left by her father by will or intestate succession is the value of such real estate).

The Illinois Supreme Court has consistently ruled that a beneficiary has standing to seek restitution on behalf of the principal based on allegations of breach of a fiduciary duty to the principal. *Chicago Park Dist, v. Kenroy, Inc.*, 78 111. 2d 555, 402 N.E.2d 181 (1980); *City of Chicago ex rel. Cohen v. Keane*, 64 IU.2d 559, 357 N.E.2d 452 (1976); *County of Cook v. Barrett*, 36 Ill.App.3d 623, 344 N.E.2d 540 (1st Dist. 1975). Under such circumstances, it does not matter if the interest sought to be protected is contingent, so long as the claim is related to preserving or protecting the claimant's future interest in the property. *Giagnorio v. Emmett C. Torkelson Trust*, 292 Ill.App.3d 318, 686 N.E.2d 42 (2d Dist. 1997) (contingent beneficiary had standing to bring action against trustee for alleged breach of fiduciary duties in connection with sale of trust corpus).

Plaintiffs' Fourth Amended Complaint alleges that Plaintiffs, as Aaron Israel's natural born sons, were his descendents, heirs-at-law, beneficiaries of trusts established by Aaron Israel, and have a legal or equitable interest in his estate. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶¶ 25, 50, and 67. Plaintiffs' Fourth Amended Complaint alleges Defendant Diane Israel owed Aaron Israel a fiduciary duty, including the duty to honor and preserve his estate plan for his other children. *Id.* at ¶¶ 26, 40 - 45. *See also*, 755 ILCS 45/2-9. Plaintiffs allege Diane Israel breached her fiduciary duties and personally profited from her misconduct. *Id.* at ¶¶ 26, 32, 48, 55. These allegations reference specific transactions that caused the loss: thwarting the sale of the West Allis Shopping Center and the Dubuque Apartments. *Id.* at ¶¶ 33, 78 - 79, 80 - 81. These allegations demonstrate Plaintiffs have sustained present pecuniary loss, and there is a real imminent threat of injury to a legally cognizable interest if the court does not adjudicate the dispute. Illinois courts have ruled in analogous cases that parties with more remote interests in the principal's estate than the Plaintiffs had sufficient standing to pursue claims for misappropriation by wayward agents.

In *Spring Valley Nursing Ctr., L.P. v. Allen*, 2012 IL App (3d) 110915, 977 N.E.2d 1230, a nursing home obtained a judgment against one of its residents, and then filed a citation to discover assets against the resident's great nephew, as her power of attorney. The plaintiff nursing home alleged the great nephew breached his fiduciary duty ***to his great aunt*** by improperly depleting her estate. *Id.* at 1232. Although lack of standing was not raised as an affirmative defense, the trial court and the Appellate Court found it no impediment to the nursing home's standing that the defendant owed the fiduciary duty to his great aunt and that she had not yet passed away. *Id.* at 1232.

Unlike Aaron Israel's children, the nursing home in *Spring Valley* was not a beneficiary of the resident's estate; it was a mere creditor. Despite its lack of a beneficial interest in the principal's estate, the court still found the nursing home had standing to challenge the misappropriation perpetrated by the resident's power of attorney. If the Appellate Court in *Spring Valley* raised no objection to a mere creditor's standing to state a claim for breach of a fiduciary duty owed to the debtor, there is no basis to deny the beneficiaries of Aaron Israel's estate the same opportunity. In addition to being consistent with prior Illinois case law, sound public policy and the equitable principals favor allowing Plaintiffs to bring all their claims in a single action.

First, Defendant does not dispute Plaintiffs have standing to bring claims under the Power of Attorney Act (Count I and II). The court has plenary authority to award money damages and grant equitable relief under the Power of Attorney Act. *See*, 755 ILCS 45/2-7, 45/2-10 (court may grant “appropriate relief including awarding compensatory damages, order restitution, order an accounting, instruct the agent to produce books and records, appoint a guardian of the principal, award attorneys fees, and

"other applicable legal and equitable remedies). This is substantially the same relief requested by Plaintiffs in remaining counts of the Fourth Amended Complaint. Counts 3-9, and 12 - 14. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint pp. 21-22 (Count III); pp. 26 - 27 (Count IV); pp. 29 - 30 (Count V); pp. 32 - 33 (Count IV); p. 38 (Count VIII); pp. 38 - 39 (Count IX); p. 44 (Count XII); p. 47 (Count XID); p. 48 (Count XIII). Judicial economy would certainly best be served by trying all the claims together. This would prevent multiple trials which would in many instances require introduction of the same witnesses and the same documentary evidence.

Second, after Aaron Israel dies, it is unlikely his estate will pursue any claims against Defendant Diane Israel for misappropriation of his assets. This is because Plaintiffs have alleged - and Defendant does not deny - that Diane Israel is the executor of Aaron Israel's estate. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶ 18, p. 3. As the executor of Aaron Israel's estate, it is reasonable to conclude Diane Israel will not initiate any claims against herself to recover assets she misappropriated from the estate while Aaron Israel is still living. This precise situation was addressed by the Kentucky Supreme Court in *Priestley v. Priestley*, 949 S.W.2d 594, 598 (Ky. 1997).

In *Priestly*, the decedent's heirs brought an action against his widow, individually, and as administrator of decedent's estate, alleging that she breached her fiduciary duties as power of attorney and as administrator. *Id.* at 594. Although not raised in the trial court, the Court of Appeals determined, *sua sponte*, that the heirs did not have standing to assert claims for breach of fiduciary duty because their claims were based on a mere expectancy. *Id.* at 595. In reversing the trial court, the Kentucky Supreme Court first observed that the defendant's "interests were hopelessly in conflict." *Id.* at 597. The court commented "[w]hile it was her duty as administratrix to marshal the assets of the estate and collect sums which might have been due the decedent for benefit of the estate, it was in her personal interest to ignore her own possible defalcation." *Id.* at 598. The Court noted that standing required "a judicially recognized interest in the subject matter of the suit," which the Kentucky Supreme Court found was "a requirement easily satisfied here" based on the plaintiffs status as the decedent's heirs. *Id.*

Again, Diane Israel's status as both her father's Power of Attorney and administrator of his estate make it unlikely she will pursue any claims against herself for depleting her father's estate after he dies. Plaintiffs should not be required rely upon Diane Israel to protect their interest and recover assets misappropriated from their father's estate after his passing because Diane Israel is the person alleged to have committed the wrongdoing. Plaintiffs are Aaron Israel's heirs-at-law, the primary beneficiaries of this estate and, like the plaintiffs in *Priestly*, they have a judicially recognized interest in Aaron Israel's estate that easily satisfies the standing requirement.

Public policy also favors a liberal interpretation of the standing doctrine under these circumstances. It is the clear public policy of the State of Illinois to prevent **elder** **abuse**. *Mason v. Dep't. of Pub. Health*, 326 Ill.App.3d 616, 761 N.E.2d 794 (5th Dist. 2001); *Cnty. of De Witt v. Am. Fed'n of State, Cnty.. Mun. Employees, Council 31*, 298 Ill.App.3d 634, 699 N.E.2d 163 (4th Dist 1998). According the Center for Disease Control, over 500,000 older adults, or 1 in 10, are **abused** or neglected each year, [10] **Elder** **abuse** takes many forms, including financial exploitation. [11] Studies note the **elderly** may be reluctant to report **abuse** themselves because of fear of retaliation, diminished physical or cognitive function, or reluctance to implicate family members in the wrongdoing. [12] The typical **elder** **abuse** victim is widowed, over 80, often male, with diminished physical or cognitive function because of age or infirmity. *Id.* "Frail, afraid, ashamed, isolated, and frequently unable to adequately state and identify their needs, these victims withdraw even more" from their family and social milieu providing convenient cover for the **abuser** to avoid detection. *Id.* at p. 3 Over half of the alleged incidents of **abuse** involve financial exploitation of an **elderly** person, with the **abuser** using their position of superiority and dominance to pray upon the victim's income, assets, or life savings. *Id.* The most common denominator among all cases of **elder** **abuse**: the **abuser** is an adult child of the victim. *Id.*

In most cases, the only individuals who have the knowledge and desire to pursue claims of **elder** **abuse** are other family members. Granting family members standing to pursue claims seeking redress for financial exploitation of the **elderly** serves

the public policy of the State by both proving a mechanism for remedying past instances of **elder abuse** and dissuading those who contemplate such misconduct with the threat of immediate civil liability.

Finally, and most importantly, the key witness in all the claims alleged in the Fourth Amended Complaint and the defenses to those claims is Aaron Israel. Mr. Israel will likely be able to provide, in many instances, dispositive testimony on the relevant issues of fact under all the counts of the Fourth Amended Complaint and the related defenses. Given his key role in the events that give rise to the claims between his children, waiting until he passes away to adjudicate these issues would not promote the interests of justice.

III. PLAINTIFFS HAVE STANDING TO PURSUE CLAIMS FOR ALIENATION OF AFFECTION

According to the Defendant, a child's love and affection for their parent is entitled to protection, but not after they grow-up. Defendant cites no Illinois case law or statutory' authority that supports her claim that an adult's affection for their parent is not a legally protectable interest. Defendant attempts to extrapolate the holding in *Johnson v. Luhman*, 330 Ill. App. 598, 71 N.E.2d 810 (2d Dist. 1947) to support her claim, but the court's reasoning in *Johnson* dictates the opposite conclusion.

In *Johnson*, a claim was brought for alienation of affection by a mother, on behalf of her five minor children. *Id.* In sustaining their claim, the Appellate Court in *Johnson* commented that claims for alienation of affection:

involve the rights which ***all members of the family*** have a right to protect. Not only does ***every member of the family have a right to protect the family relationship*** but the State likewise has an interest in the sacredness of the family relationship. Certainly to give a license to one who would disrupt that relationship by tying the hands of injured members of the family, is not only clearly in conflict with Section 19 of Article II of our State constitution, but appears to us to be contrary to all sense of justice.

Id. at 603 - 04, 71 N.E.2d at 812 -13 (emphasis added).

As noted by the court in *Johnson*, not only do children have a protectable interest in the family relationship, but all members of the family have the same protectable interest, including adult children. The only other case cited by the Defendant, *Hargan v. Sw. Elec. Co-op., Inc.*, 311 Ill. App. 3d 1029, 725 N.E.2d 807 (5th Dist. 2000) illustrates this point.

In *Hargan*, a former husband brought suit against his former wife's employer for alienation of affection. *Id.* at 1030, 725 N.E.2d at 808. The court in *Hargan* dismissed plaintiffs claims on the basis that the employer could not be held vicariously liable for the president's alleged actions, which the court found to be outside the scope of his employment. *Id.* at 1029, 725 N.E.2d at 807. However, in so holding, the court *Hargan* drew no distinction between the protectable interest of family members in their mutual love and affection simply because both parties were adults. *Id.*

Claims for alienation of affection in Illinois are now governed by the Alienation of Affection Act. 740 ILCS 5/7 (1948). Nothing in the Act limits the remedial provisions of the Act to only minor children. To the contrary, the Act specifically states that it "shall be liberally construed to effectuate the objects and purposes thereof and the public policy as herein declare." *Id.* at 740 ILCS 5/7. Since, as stated by the court in *Johnson*, it is the public policy of the State that all members of the family have a right to protect the family relationship and the Alienation of Affection Act is intended to be liberally construed to achieve that purpose, in the absence of any statutory language or judicial decisions restricting causes of action under the Act to minor children, Plaintiffs' claims for alienation of their father's affection should be sustained.

IV. *PLAINTIFFS HAVE STATED A PRIMA FACIE CASE FOR TORTIOUS INTERFERENCE WITH AN INHERITANCE*

Defendant's argument that Plaintiffs' tortious interference with an inheritance claim is not "ripe" is simply a variation on Defendant's previous standing argument. Defendant does not argue that Plaintiff Harey Israel has failed to allege the necessary *prima facie* elements of the claim. Defendant simply argues, as she did when urging dismissal of the prior counts of the Fourth Amended Complaint, that Harey Israel cannot assert the claim until his father passes away.

The death of the testator is not a *prima facie* element of a claim for tortious interference with an inheritance. In *In re Estate of Henry*, 396 Ill. App. 3d 88, 97 - 98, 919 N.E.2d 33, 41 -42 (1st Dist. 2009), the case cited by Defendant, the court lays out the necessary elements to state a claim for tortious interference with expectancy. The elements are: (1) the existence of an expectancy; (2) defendant's interference with that expectancy; (3) that the interference involved conduct that was tortious in itself, such as fraud or duress; (4) a reasonable certainty that the expectation would have been realized; and (5) damages. *Id.* Plaintiffs have alleged each of these elements in Count XVI of the Fourth Amended Complaint. *See*, Exhibit I, Plaintiffs' Fourth Amended Complaint ¶¶ 136 - 143.

Defendant's argument that the death of the testator is a *prima facie* element of the claim simply does not comport with the applicable case law. For the reason previously discussed, *supra* Section II, Plaintiff Harey Israel does have a present protectable interest in his father's estate, which has been damaged by his sister's interference with Aaron Israel's execution of the trust documents that would have immediately transferred the West Allis Property into a trust that was to hold present title to the property and provide Harey with immediate income.

Defendant misstates the basis for the court's dismissal of the tortious interference with an inheritance claim in *In re Estate of Mocny*, 257 Ill. App. 3d 291, 630 N.E.2d 87 (1st Dist. 1993). In *Mocny*, the court dismissed the claim because it lacked allegations that the interference involved tortious conduct. *Id.* at 298, 630 N.E.2d at 93. In the present case, Plaintiffs have alleged Defendant Diane Israel interfered with the transfer of the West Allis Property by making fraudulent statements to their father, exerting undue influence over their father, alienating their father's affection, and making defamatory statement about Plaintiff Harey Israel. *See*, Exhibit 1, Plaintiffs' Fourth Amended Complaint ¶¶ 140, p. 50. Because Plaintiffs' Fourth Amended Complaint contains the required allegations of tortious conduct and Harey Israel has standing to pursue the claim, the holdings in *Mocny* and *Henry?* do not warrant dismissal of Count XVI.

V. ... *AND HE SAID. YES*.

The disposition of this case hinges on the answer to a simple question: whether Aaron Israel wants to see his family and friends. Plaintiffs claim Aaron Israel is being deprived of the opportunity to do so by the dominance and control exerted by Diane Israel, due in part, to conceal her misappropriation of massive sums of money from his estate. Defendant Diane Israel claims Aaron Israel does not want to be visited by his children, grandchildren and great-grandchildren because of animosity that exists between Aaron Israel and his sons. Evidence has already emerged that Defendant's claims are a fiction.

Officer Edward Santiago of the Sunny Isles Beach Florida Police Department interviewed Aaron Israel in March 2013, in response to a call made by his grandson, Michael Israel, who was concerned about Aaron Israel's well being after he was denied the opportunity to visit him. Officer Santiago official police report and sworn Affidavit states:

I then asked Mr. Israel if he wanted to speak with Michael [his grandson] and he stated, yes.

See, Exhibit 1, Plaintiffs' Fourth Amended Complaint, Exhibits A and B.

Marty Israel, a family friend and neighbor of the Israel family (but, ironically, not related to them) has submitted an Affidavit based on his personal observations of Aaron Israel and his family over a 40 year span. *See*, **Exhibit 7**, Affidavit of Marty Israel. Marty Israel worked with Defendant Diane Israel and considers her to be a friend to this day. *Id.* at ¶¶ 7, 12. He attended Miriam Israel's funeral and visited the Shiva House, which was held at Diane Israel's home. *Id.* at ¶ 11. He has personal knowledge that during the seven year period of Miriam Israel's illness prior to her death, Harey Israel visited his mother and father on an almost

daily basis at their home. *Id.* at ¶¶ 9, 10. Marty Israel is aware of various disputes that have arisen between Aaron Israel and his sons, some of which have involved litigation. *Id.* at ¶ 13. Despite these disputes, Marty Israel believes that Aaron Israel and Harey Israel maintained a close, loving, father-son relationship, and there is no basis to conclude that Aaron Israel would not want to be visited by or communicate with the Plaintiffs or other members of his family. *Id.* at ¶¶ 13, 14.

Finally, a recent encounter between Aaron Israel and the Rabbi of the synagogue in Florida where he worships is perhaps the most telling evidence of Aaron Israel's present desire. At the request of Aaron Israel's two granddaughters, Shanna Israel and her sister Felicia Israel, Rabbi Jonathan Berkun approached Aaron Israel after services ended to ask him a simple question: Do you want to see your family. Rabbi Berkun stated:

Your grandfather was willing to meet with you, but he did not seem to fully understand he was being prevented from seeing everyone.

See, **Exhibit 8**, Email correspondence between Shanna Israel and Rabbi Jonathan Berkun. (Rabbi Berkun's impressions of his encounter with the “menacing” bodyguard who accompanied Aaron Israel to Temple provide further credence to the allegations of the Fourth Amended Complaint.)

CONCLUSION

Before the Court is more than mere conclusory allegations based on speculation and conjecture. There are the well-plead allegations of the Fourth Amended Complaint. This includes reference to specific dates, events, locations, and names of witnesses to the events. There is the report of Dr. Alexander Obolsky, a Board Certified Psychiatrist, who based his opinion that Aaron Israel lacks the capacity to control or revoke the Power of Attorney on undisputed facts, and evidence gleamed from the sworn testimony of Aaron Israel's treating physician, as well as statements from Aaron Israel and his attorney. Dr. Obolsky relied upon factors identified in peer reviewed medical journals, which the type of information is normally relied upon by experts in his field in formulating an opinion. Finally, there are the statements of disinterested third parties: a police officer, a close family friend, and a Rabbi. These are impartial, unbiased, highly credible witnesses, two of which were personally told by Aaron Israel that he wants to see his family. These statements is diametrically opposite to what Defendant Diane Israel claims to be her father's intent.

Defendant's Motion to Dismiss the Fourth Amended Complaint should be denied because Plaintiffs have not only supported each of their claims with well-plead allegations that set forth both their standing to bring the claims and the *prima facie* elements of the substantive causes of action. But, Plaintiffs' in this case have done more. They have put before this Court evidentiary material that corroborates and substantiates each of the allegations of their Fourth Amended Complaint. They have presented independent evidence that Aaron Israel wants to see his family, and is being deprived of the opportunity to do so. The reasonable inference is that he cannot because he has been so completely isolated by his domineering daughter that he lacks the capacity to control her conduct, including revoking the Power of Attorney she uses to control him. Plaintiffs have not only stated their claims, they stand ready to prove it.

Respectfully submitted,

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Footnotes

1 The Affidavits of Dr. Michael Eimer, Dr. Gabriel Berlin and Dr. Howard Berlin were submitted by Aaron Israel in his effort to avoid being deposed because of his ill health. Despite asserting that Aaron Israel suffered from a constellation of physical and emotional conditions that prevented him from being deposed, Defendant now assert that Plaintiffs' claims based, in part, on these same symptoms are insufficient to state a claim.

2 Bassuk, Shari S., Glass, Thomas, and Berkman, Lisa, *Social Disengagement and Incident Cognitive Decline in Community Dwelling* ***Elderly*** *Persons*, Annals of Internal Medicine, Vol. 131(3). 3 Aug. 1999 pp. 165-173 (Table 3).

3 C, Peisha, *et al., The Wills of Older People: Risk Factors for Undue Influence*, International Psychogeriatrics (2009).

4 *Id.* at p. II.

5 *Id.* at p. 11

6 *Id.* at p. 10.

7 Bassuk, Shari S., Glass, Thomas, and Berkman, Lisa, *Social Disengagement and Incident Cognitive Decline in Community Dwelling* ***Elder****-lv Persons*, Annals of Internal Medicine, Vol. 131(3), 3 Aug. 1999 pp. 165-173 (Table 3).

8 C. Peisha, *et al.. The With of Older People: Risk Factors for Undue Influence*, International Psychogeriatrics (2009) p. 10.

9 "The express mention of one thing excludes all others."

10 http://www.cdc.gov/features/elderabuse/

11 ***Elder*** ***Abuse*** *Fact Sheet*, Illinois Criminal Justice Information Authority (Sept. 2010).

12 Michelle Rapp, *The Extent and Nature of* ***Elder*** ***Abuse*** *in Illinois*, The Compiler, (Ill. Crim. Just. Info. Authority) Vol. 25, No. 1 (Summer 2006).

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